Chicago-Kent Law Review

Volume 34 | Issue 4 Article 3

September 1956

Recent Illinois Decisions

Chicago-Kent Law Review

RECENT ILLINOIS DECISIONS

CORPORATIONS—OFFICERS AND AGENTS—WHETHER AN EXECUTIVE COMMITTEE MAY BE COMPOSED OF NON-DIRECTORS OF THE CORPORATION—Questions concerning the creation and composition of an executive committee of a board of directors in an Illinois corporation have been judicially determined in the recent case of *Steigerwald* v. *A. M. Steigerwald Company*[1] wherein the reviewing court was, for the first time, called upon to construe Section 38 of the Illinois Business Corporation Act.[2] In that case, a majority of a three-man board of directors had enacted a by-law providing for the creation of an executive committee to be composed of three reputable business men, all to be appointed by the president of the corporation. Pursuant to such purported authority, the president had so appointed three persons, not directors of the corporation, and the committee so composed thereupon purported to authorize an increase in the compensation of certain of the corporate personnel, including that of the president. At this juncture, the plaintiff, a stockholder and the minority director, filed suit against the corporation and the other two directors to enjoin the payment of such additional compensation. The trial court granted the requested relief and this judgment was affirmed by the Appellate Court for the First District on the theory that the statute under consideration required that all members of an executive committee be directors of the corporation and that such members should be appointed by the board rather than by the president.

Executive committees, often utilized in connection with the management of corporations, as may be seen from cases[3] decided prior to the first Illinois corporation act that recognized such committees,[4] are not necessarily a by-product of legislative enactment, for executive committees have been used in the past for much the same purpose as they are used today, to-wit: "to facilitate the business matters of the corporation."[5] The Illinois Corporation Act of 1919, therefore, allowed a corporation, through its by-laws, to determine how an executive committee should be formed, as well as the authority to be given to, and the restrictions placed

[1] 9 Ill. App. (2d) 31, 132 N. E. (2d) 373 (1955).

[2] Ill. Rev. Stat. 1955, Vol. 1, Ch. 32, § 157.38, states: "If the by-laws so provide, the board of directors . . . may designate two or more directors to constitute an executive committee, which committee . . . shall have and exercise all of the authority of the board of directors. . . ."

[3] Gridley v. L. B. M. Ry. Co., 71 Ill. 200 (1873); Rockford, R. I. & St. L. R. R. Co. v. Sogo, 65 Ill. 328 (1872).

[4] Cahill Ill. Rev. Stat. 1919, Ch. 32, § 26.

[5] Saunders, "Corporations—The Executive Committee in Corporate Organization—Scope of Powers," 42 Mich. L. Rev. 133 (1943), at p. 144.

upon, such committees. It should be noted, however, that the statute opened the door to the possibility that the management of a corporation might be relegated to persons not selected by the stockholders, contrary to the generally accepted scheme of corporate management. It also apparently permitted the directors to shirk their responsibilities since there was no specific provision making the directors liable for the acts of the executive committee. It would seem, therefore, to be a fair inference that the legislature intended to close this door by the changes it made in the language of Section 38 when the same was last re-enacted.

With respect to the decisional law on the subject, it can be said that the Illinois reports are barren of exact or even closely related judicial precedents,[6] but that is not to say that there are no indications of the direction to be taken. From an early date, it has been the inviolate right of the stockholders to determine who shall manage the affairs of their corporations, which right has been protected by constitutional fiat.[7] In *Laughlin* v. *Greer*,[8] therefore, it was held that one director, following his election to office by vote of the shareholders, could not be removed from office by action on the part of the other directors. Perhaps the strongest analogy, however, is to be found in the case of *People ex rel. Weber* v. *Cohn*,[9] wherein it was held that the directors of a corporation are without power to fill vacancies which might develop on the board.[10] It would seem to follow, therefore, that if the directors may not invest outsiders with managerial power by direct election to the board, they should not be permitted to do so in any other and less direct fashion.

As heretofore indicated, the instant case also decided that the Illinois statute would not permit the delegation of a power to select the membership of the executive committee to the president of the corporation. While this point was decided without extended discussion, that determination would appear to be consistent with a literal reading of the statute, for a contrary result would permit the president of a corporation to dominate it completely. In the event a corporate board proved to be deadlocked, it is likely that the president would emerge as the dominant figure, particularly so if he had the power to appoint the members of the executive committee. He could then produce any desired course of action by the

[6] Dela. Code Ann. 1953, Vol. 4, Tit. 8, Ch. 1, § 4, is similar to the statute here in question. In Bowen v. Imperial Theatres, Inc., 13 Del. Ch. 120, 115 A. 918 (1922), it was decided that, under this statute, an executive committee had to be composed of directors of the corporation, hence non-directors would not be permitted to sit on such a committee.

[7] Ill. Const. 1870, Art. XI, § 3.

[8] 121 Ill. App. 534 (1905).

[9] 339 Ill. 121, 171 N. E. 159 (1930).

[10] In that connection, however, see Ill. Rev. Stat. 1955, Vol. 1, Ch. 32, § 157.36.

simple expedient of appointing friendly persons to such a committee. By striking down this possibility, the instant case represents a further step along a path directed toward the upholding of the inherent rights of stockholders.

DISCOVERY—UNDER STATUTORY PROVISIONS—WHETHER IT IS PROPER TO USE A STATUTORY INTERROGATORY TO DISCOVER FROM A PARTY THE NAMES AND ADDRESSES OF "OCCURRENCE WITNESSES" TO THE PLAINTIFF'S INJURY—There is evident reason to believe that the discovery provisions of the 1955 revision of the Illinois Civil Practice Act[1] are due to be given a liberal interpretation because of the Illinois Supreme Court holding in the recent case of *Krupp* v. *Chicago Transit Authority*.[2] The case was one in tort against a transit company for injuries sustained by the plaintiff as the result of an alleged negligent operation of one of the company's cars. Following institution of the suit, the plaintiff submitted eleven written interrogatories to the defendant corporation. It answered nine of these queries but refused to answer one seeking to elicit the names and addresses of "occurrence witnesses" to the plaintiff's injury and also refused to answer another which requested information concerning the names and addresses of persons who had "witnessed" the plaintiff's injured condition subsequent to the accident. The trial court adjudged the company to be guilty of contempt because of its refusal to respond to these two interrogatories. The Appellate Court for the First District, on appeal to it, reversed the contempt order. Following the granting of leave to appeal to it, the Supreme Court reinstated the order of the trial court and directed that the defendant be held for its contempt.

The defendant had justified its refusal to answer on two grounds, to-wit: first, there was no provision in the Civil Practice Act or in any rule of court which specifically authorized interrogatories of this nature; and second, that in the absence of a specific provision, the limitations historically governing the allowance of discovery in equity were to be considered as controlling. The Supreme Court, rejecting this argument, pointed out that, while the first paragraph of Section 58 of the earlier Civil Practice Act did pertain to a discovery as available in equity,[3] the second paragraph thereof dealt with a form of discovery not theretofore

[1] Ill. Rev. Stat. 1955, Vol. 2, Ch. 110, § 58 and § 101.17 et seq.

[2] 8 Ill. (2d) 37, 132 N. E. (2d) 532 (1956), noted in 44 Ill. B. J. 784, reversing 4 Ill. App. (2d) 222, 124 N. E. (2d) 13 (1955).

[3] Ill. Rev. Stat. 1953, Vol. 2, Ch. 110, § 182(1), did declare that, whenever a bill for discovery, or interrogatories in a bill for relief, would heretofore have been available, "the same discovery may hereafter be had by motion filed in the cause wherein the matters sought to be discovered would be used."

available.[4] In addition, the discovery rules which the court had adopted after the earlier act had become effective,[5] were said to be, both in substance and in a host of particulars, intended to go far beyond the limits of classical discovery as permitted in equity, hence were not to be restricted to those limits.

The defendant had also argued that the information sought was privileged because obtained by it in preparation for trial[6] and also because it enjoyed a special statutory privilege under Section 23 of the Metropolitan Transit Authority Act.[7] These contentions were answered when the court said it was the responsibility of the person claiming the privilege to show how the alleged privileged report had come into existence, which the defendant had not done, and that the special statutory provision so invoked did not put the defendant "upon a different plane than other litigants with respect to documents and records prepared for use in negotiations or on a trial" but was intended to do no more than insure that the provisions for public inspection of its records would "not operate to place it on a different plane" in this respect.[8]

The questions relating to discovery which came up in the principal case arose prior to the adoption of the current Civil Practice Act.[9] It could be said, therefore, that the case does not necessarily represent the state of the law in Illinois today. For that matter, there are cases in other jurisdictions holding both ways on the question of the right to obtain a pretrial discovery of the names and addresses of witnesses to an accident or other incident,[10] with the majority of such cases recognizing that there may be a discovery either as a matter of right or under the exercise of a proper judicial discretion. Nevertheless, the case tends to reveal an attitude on the part of the court which could be said to be extremely favorable to the questioning litigant provided he will confine his inquiry

4 Ibid., Ch. 110, § 182(2), stated: "Discovery of documents which are or have been in the possession of any other party to the action may be requested and answers to written interrogatories may be required of any other party . . . under such terms and conditions as may be prescribed by rules."

5 Ibid., Ch. 110, §§ 259.17-259.19.

6 In that connection, see former Rule 17 of the Illinois Supreme Court, Ill. Rev. Stat. 1953, Vol. 2, Ch. 110, § 259.17.

7 Ill. Rev. Stat. 1955, Vol. 2, Ch. 111⅔, § 323.

8 8 Ill. (2d) 37 at 42, 132 N. E. (2d) 532 at 536.

9 While Ill. Rev. Stat. 1955, Vol. 2, Ch. 110, § 58(3), does say that a "party shall not be required to furnish the names or addresses of his witnesses," an accompanying rule of court, set out in Ill. Rev. Stat. 1955, Vol. 2, Ch. 110, § 101.19-4, says that, upon a discovery deposition, "the deponent may be examined regarding any matter, not privileged, relating to the merits of the matter in litigation . . . including the . . . identity and location of persons having knowledge of relevant facts."

10 See annotation in 37 A. L. R. (2d) 1152.

to the permitted purpose of uncovering no more than the names and addresses of those occurrence witnesses who might be said to have "knowledge of relevant facts" without seeking information concerning those persons whom his opponent intends to call as trial witnesses. Obviously, the problem hereafter will be one calling for a careful phrasing of the interrogatory. The basic philosophy underlying the trial of cases has, however, been changed tremendously.